BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LILLIAN B. HOPPER	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 201,516 & 219,693
DILLON COMPANIES, INC.	)	
Respondent	)	
Self-Insured	)	

ORDER

Claimant appeals from an Award entered by then Assistant Director Brad E. Avery on August 13, 1998. The Appeals Board heard oral argument March 24, 1999.

APPEARANCES

Paul D. Post of Topeka, Kansas, appeared on behalf of claimant. Scott J. Mann of Hutchinson, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant seeks benefits for two injuries.

In Docket No. 201,516, alleging a repetitive trauma injury to the right upper extremity with a February 8, 1995, date of accident, the Assistant Director found claimant did not prove that she was disabled from earning full wages for one week and for that reason limited the award to the medical benefits only under K.S.A. 44-501(c).

In Docket No. 219,693, alleging injury to the neck and right shoulder in September 1996, the Assistant Director denied benefits based on his finding that claimant failed to prove accidental injury arising out of and in the course of her employment.

Claimant appeals both awards and asks the Appeals Board to grant benefits for permanent disability in both cases.

The issues on appeal in Docket No. 201,516 are as follows:

1. Is respondent bound by its initial stipulation that the injury arose out of and in the course of employment or did respondent successfully withdraw that stipulation?

2. If the stipulation is considered to be withdrawn, did claimant's injury arise out of and in the course of employment?

3. Is claimant limited to medical benefits only pursuant to K.S.A. 44-501 because she was not disabled for one week from earning full wages?

4. If claimant is entitled to permanent disability benefits, what is the nature and extent of the disability?

The issues on appeal in Docket No. 219,693 are as follows:

1. Is respondent bound by its initial stipulation that the injury arose out of and in the course of employment or did respondent successfully withdraw that stipulation?

2. If the stipulation was withdrawn, did claimant's injury arise out of and in the course of employment?

3. If the injury arose out of and in the course of employment, what is the nature and extent of disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments made by the parties, the Appeals Board concludes the Award in Docket No. 201,516 should be modified. Claimant is, for the reasons given below, granted benefits for a 10 percent impairment to the right upper extremity in Docket No. 201,516. In Docket No. 219,693, the Board concludes claimant has proven accidental injury arising out of and in the course of employment but has not proven that she suffered permanent impairment from that injury.

Findings of Fact

1. Claimant began working for respondent Dillon Companies in 1991 as a cashier. In November 1992, she began having symptoms in her right wrist after lifting a turkey from a basket onto the scanner. Claimant reported the incident but did not initially seek medical attention. The symptoms gradually worsened and in February 1995 claimant went to her own physician, Dr. Kenneth E. Teter.

2. Claimant missed all or part of more than five days work in 1995 for medical treatment due to this injury. On at least four of these days—March 22, March 25, April 5, and April 18—claimant was not paid for the time off. On February 8, 1995, and on April 14, 1995, she missed work but was paid injury benefits.

3. Dr. Teter's records for the initial visit on February 8, 1995, record a work-related history to claimant's right upper extremity problems:

> This is a 32-year old female with complaints of right hand and wrist pain and numbness which began on the job at her employment at Dillon's. She works as a cashier and has noticed increasing pain and numbness, especially at the end of the day and also at night.

As of February 14, 1995, Dr. Teter recommended claimant have a rest period after two hours of her checking duties.

4. Dr. Teter treated claimant from February 8, 1995, through January 16, 1996, for the right upper extremity problems. He initially diagnosed probable right carpal tunnel syndrome and a component of de Quervain's tenosynovitis of the right wrist. The nerve conduction studies showed a mild slowing of the nerve conduction consistent with mild carpal tunnel syndrome. But by December 1995, Dr. Teter concluded claimant's complaints were not from carpal tunnel syndrome. In January 1996 he concluded there were no subjective complaints consistent with carpal tunnel syndrome. Dr. Teter testified that mild carpal tunnel could qualify for up to 10 percent impairment of the extremity. However, he treated the impairment, based on the neurodiagnostic abnormalities with very little symptoms, as 5 percent impairment of function to the right upper extremity.

5. While claimant was seeing Dr. Teter, respondent sent claimant to Dr. Brad W. Storm. Dr. Storm saw claimant on June 22, 1995. Based on part on the EMG studies done for Dr. Teter, Dr. Storm concluded claimant had mild carpal tunnel syndrome. He recommended surgery but claimant declined. Dr. Storm found no symptoms of de Quervain's. He rated the impairment as 10 percent of the right upper extremity.

6. In September 1996, claimant injured her neck while moving a large box from the counter to the mail bag at the post office area of the Dillon's store. Claimant reported the accident and respondent referred her to Dr. Teter.

7. Dr. Teter first saw claimant for the neck injury on September 20, 1996. Dr. Teter diagnosed cervical strain and trapezial muscle strain. He recommended physical therapy and medication. He did not provide an impairment rating for the neck.

8. Dr. Jeffrey T. MacMillan examined claimant at respondent's request. He gave no opinion as to the rating for carpal tunnel syndrome. He did find some indications of tendinitis on the right. He suggested an MRI of the neck. The results were normal. X-rays

of the neck were also normal. Except for possibly slightly decreased neck flexion and reduced rotation on the right, he found normal range of motion. He found no trigger point tenderness. He rated the impairment for the neck injury as 0 percent.

9. Dr. P. Brent Koprivica examined claimant and evaluated claimant's injuries at the request of claimant's counsel. He diagnosed chronic right de Quervain's syndrome and mild carpal tunnel syndrome. He also diagnosed chronic cervical strain. He rated the impairment at the wrist level as 19 percent. He rated the impairment for the cervical strain as 5 percent at the shoulder level. Dr. Koprivica acknowledged his physical examination of the neck and shoulder were normal. Claimant's cervical and shoulder range of motion were normal.

10. At the time of the regular hearing scheduled for March 11, 1998, respondent stipulated in both docketed cases that claimant experienced accidental injury arising out of and in the course of her employment. The parties also stipulated to the extent of functional impairment in the second claim involving the neck and shoulder, Docket No. 219,693. Claimant did not appear at the hearing due to car problems and the hearing was continued for the taking of claimant's testimony by deposition on April 20, 1998. At the beginning of the claimant's deposition, respondent's counsel advised he was stipulating that claimant suffered accidental injury on the dates alleged but denying that the injuries arose out of and in the course of employment. Claimant's counsel expressed no objection.

Conclusions of Law

1. The Board concludes respondent's stipulations regarding whether claimant's injuries arose out of and in the course of employment should be treated as withdrawn. As to Docket No. 201,516, the Assistant Director found the stipulation to be binding, citing the fact that respondent's brief indicates the injury arose out of and in the course of employment. But the Board notes the submission letter itself identifies this as an issue in both docket numbers. The Assistant Director did not address the stipulation in Docket No. 219,693.

The Board grants the request to withdraw the stipulation in both cases because the request was made before evidence was taken. Claimant was in no way prejudiced by the withdrawal.

2. The Board finds, as to both docket numbers, that claimant has proven the accidental injury did arise out of and in the course of employment. In both cases, claimant's testimony is essentially uncontradicted and is supported by the history given to the various physicians.

3. The Board concludes claimant's claim in Docket No. 201,516 is not limited to the medical benefits under K.S.A. 44-501. The relevant provision of K.S.A. 44-501 states in subsection (c):

> Except for liability for medical compensation . . . the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

The Board construes this statute as a requirement that the injury exceed a minimum threshold of seriousness before permanent disability benefits can be awarded. But the Board concludes that time missed from work for medical treatment should be treated as time claimant was disabled from earning full wages at the work at which he/she is employed. The Board does not believe the statute requires that the time missed from work be consecutive days. In this case, the evidence establishes that claimant missed all or part of the day for what would be more than a full work week. In some cases, she was paid disability benefits but this is not the same as "wages." On that basis, the Board concludes claimant is not limited to the medical benefits under K.S.A. 44-501.

4. In Docket No. 201,516, the Board finds claimant has a 10 percent permanent partial disability to the right upper extremity at the forearm 200-week level. This conclusion takes into consideration the opinions of the various physicians as well as the fact that the carpal tunnel symptoms had largely subsided at the time she was seen by Dr. Teter in 1996. Although this latter fact might suggest a lower percentage, the Board is convinced claimant has some impairment from the de Quervain's condition which, together with the carpal tunnel, warrants the 10 percent rating.

5. In Docket No. 219,693, the Board concludes claimant has not proven any permanent impairment from the neck and shoulder injury in September 1996. This conclusion is based on the opinion of Dr. MacMillan and the absence of any significant findings by Dr. Teter and Dr. Koprivica. Claimant is entitled to an award for the medical benefits paid and unauthorized medical expense but is not entitled to permanent disability benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by then Assistant Director Brad E. Avery on August 13, 1998, should be, and the same is hereby, modified.

Docket No. 201,516

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Lillian D. Hopper, and against the respondent, Dillon Companies, Inc., a qualified self-insured, for an accidental injury which occurred February 8, 1995, and based upon an average weekly wage of $298.83, for 20 weeks at the rate of $199.23 per week, or $3,984.60, all of which is presently due and owing in one lump sum.

Claimant is entitled to future medical expense upon application to and approval by the Director.

Docket No. 219,693

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Lillian D. Hopper, and against the respondent, Dillon Companies, Inc., a qualified self-insured, for an accidental injury which occurred September 1996, for medical benefits only, including unauthorized medical expense, and is not entitled to permanent disability benefits.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Scott J. Mann, Hutchinson, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director